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No. 07-235

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SUPREME COURT, U.S.

In The
Supreme Court of the United States

WAYNE J. DUCHMANN,

Petitioner,

v.

MURPHY OIL USA, INC. and
PATRICK JOSEPH TURNER, et al.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Does an individual who is not a class member have standing to appeal court approval of a settlement of the class action?

2. Does an individual who is not a legally recognized representative of the estate of a deceased class member have standing to object to an appeal of the settlement of the class action on behalf of the deceased person?

PARTIES INVOLVED

The undersigned counsel of record for Respondents, Murphy Oil USA, Inc. and Patrick Joseph Turner, et al. identifies all of the parties appearing here and before the United States Court of Appeals for the Fifth Circuit, and who now have an interest in the outcome of this case:

Murphy Oil USA, Inc. – Respondent

Liaison Counsel on Behalf of Court Appointed Plaintiffs' Steering Committee – Respondent

Wayne J. Duchmann – Petitioner

CORPORATE DISCLOSURE STATEMENT

Murphy Oil USA, Inc. is a wholly owned subsidiary of Murphy Oil Corp., a publicly traded company.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Petition presents no ground specified in Rule 10 of this Court. Pro Se Petitioner, Wayne Duchmann, attempts to frame the issue raised by his petition as one of constitutional scope. He implies that the United States Court of Appeals for the Fifth Circuit deprived him of the right to due process when it dismissed his appeal from the United States District Court of Louisiana's approval of a class action settlement. In reality, the Court of Appeal dismissed Petitioner's appeal for lack of standing because he was not a member of the class, nor a representative of any person or entity who is a class member.

OPINIONS AND ORDERS BELOW

The Order of the United States Court of Appeals for the Fifth Circuit appealed from is found in the Appendices to the Petition for Writ of Certiorari at App. 1-2. The Order and Reasons of the District Court, which was the subject of Petitioner's appeal below, is found at App. 4-81. Respondent's Emergency Motion to Dismiss Petitioner's Appeal below is appended to this Brief.

JURISDICTION

1. The District Court had jurisdiction under 28 U.S.C. §1332. The Court of Appeals had jurisdiction under 28 U.S.C. §1291.

2. The Fifth Circuit's Order Granting Respondent's Motion for Dismissal and dismissing Petitioner's appeal was issued on April 19, 2007. No petition for rehearing was filed. The Petition for Writ of Certiorari was filed June 18, 2007 and docketed on August 22, 2007.

COUNTERSTATEMENT OF THE CASE

Respondent, Murphy Oil USA, Inc. ("Murphy"), operates a refinery in St. Bernard Parish, Louisiana. Respondents, Patrick Joseph Turner, et al., are members of the class certified by the United States District Court for the Eastern District of Louisiana in Case No. 05-04206, consisting of residents and owners of property in a specifically defined geographical area surrounding Murphy's refinery (the "Class Action Plaintiffs").

On August 29, 2005, Hurricane Katrina pushed waters from the Gulf of Mexico into southern Louisiana, and inundated almost all of St. Bernard Parish. These floodwaters caused one of the crude oil storage tanks on Murphy's refinery to lift off of its foundation and to spill crude oil onto the surrounding property. The crude oil mixed with floodwaters caused damage

to property in the area surrounding the Murphy refinery. Immediately after the catastrophe, in early September, 2005, Murphy undertook cleanup and remediation efforts in public spaces and for homeowners in the surrounding area, and it undertook a program of voluntary settlements with residents in the area of its refinery.

On September 9, 2005, the first of many lawsuits regarding this accident was filed against Murphy. Ultimately, a total of 27 class action suits were consolidated into a single class action before the United States District Court for the Eastern District of Louisiana. Under the management of the District Court, Murphy negotiated with the Class Action Plaintiffs through their executive committee and their liaison counsel. Following extensive discovery, testing, and motion practice, on January 12 and 13, 2006, the Court held a two-day class certification hearing and certified the matter as a class action pursuant to Rule 23(b)(3) of the FEDERAL RULES OF CIVIL PROCEDURE. *See Turner v. Murphy Oil USA, Inc.*, 234 F.R.D. 597 (E.D. La. 2006). The District Court certified a class composed of residents and property owners within specific geographic boundaries adjoining the Murphy refinery. The District Court directed the issuance of appropriate notice pursuant to Rule 23(c)(2) of the FEDERAL RULES OF CIVIL PROCEDURE, and it provided a procedure to permit class members to opt out of the class action litigation.

On September 25, 2006, Respondents notified the District Court that they had come to an amicable

resolution of the case, and on October 9, 2006, the parties presented a Final Settlement Agreement and Notice Program to the Court. The District Court outlined and supervised procedures for class members to opt out or to opt back into the class. The Court also provided a procedure for class members to file objections to the settlement program on or before December 15, 2006, and ordered that all objections were to be filed into the record and that any objectors would be given an opportunity to be heard at the fairness hearing. The District Court also appointed a retired Louisiana judge to serve as the special master to assist in resolving objections or allocation disputes, and it appointed dispersing and administrative agents to assist with the administration of claims.

Under the settlement agreement, Murphy agreed to establish a fund consisting of approximately two hundred million dollars to buy and remediate properties in the buyout zone and to otherwise compensate the Class Action Plaintiffs. The District Court provided for and supervised dissemination of notice of the settlement and all of its terms and provided for a comprehensive claims and settlement administration process. The settlement consisted of 6,500 properties.

On January 4, 2007, the District Court held a fairness hearing to determine whether it should grant final approval of the settlement program. At the fairness hearing petitioner, Wayne Duchmann, was one of only two objectors who addressed the District Court concerning their objections. Neither at the fairness hearing nor at any time previous or since has

Mr. Duchmann provided proof of residency or property ownership in the class area. He also purports to represent the interest of his mother who was recently deceased, and who allegedly owned property within the buyout zone. Mr. Duchmann presented no evidence that he was the appropriate representative of his mother's estate. At the fairness hearing, Mr. Duchmann admitted that his brother was his mother's estate representative. Under Louisiana law, only a recognized successor or executor of an estate is the proper legal representative of a deceased party, and only such a successor may enforce the deceased's rights. As a result, the District Court found that Mr. Duchmann was not a class member, and did not legally represent his mother or any other class member, and therefore he lacked standing to object to the settlement agreement. App. pp. 46-48. The District Court approved the settlement.

Mr. Duchmann filed his notice of appeal of the District Court's approval of the settlement agreement on March 7, 2007. Thereafter, Murphy filed its motion to dismiss that appeal. On April 19, 2007, the United States Court of Appeals for the Fifth Circuit granted Murphy's motion and dismissed Mr. Duchmann's appeal for lack of standing.

Petitioner has made no effort to suspend the effect of the District Court's approval of the class action settlement. He has posted no bond and sought no stay of the effect of the District Court's order. As a result, Murphy has expended hundreds of millions of

dollars in the administration and funding of remediation and buyouts of property. Thousands of residents of St. Bernard Parish have received funds necessary for them to either renovate their homes or get on with their lives in other locations. The class action procedure has proceeded so that virtually all of the Class Action Plaintiffs have partaken of the settlement process and funds. The process has been efficient and successful.

Mr. Duchmann's statement of the case is materially inaccurate in that it does not recite the basis for the denial of his appeal, the fact that he is not a class member, and the fact that he is not the proper legal representative of his mother's estate. Mr. Duchmann did not attempt to intervene in the proceedings below to achieve any other form of standing. Accordingly, he cannot be heard to complain about a settlement which has no impact on him. Mr. Duchmann's objection, and his subsequent appeal to the United States Court of Appeals for the Fifth Circuit was nothing more than an attempt to block the process for the purpose of getting attention and gaining an unfair advantage in negotiations with Murphy.

The District Court below took great pains to efficiently manage the enormous class action and the complex issues presented by the Hurricane Katrina disaster for the residents of St. Bernard Parish. It also attempted to reach an expeditious resolution to the issues raised in those class actions in order to not further burden the residents of St. Bernard Parish with delay in obtaining funds to help them deal with

the disaster caused to them by the hurricane and the subsequent oil spill. The Fifth Circuit quickly dismissed Mr. Duchmann's appeal in order to prevent any unwarranted delay of the process designed to alleviate the pain caused by Hurricane Katrina. Mr. Duchmann's attempt to further obstruct that process is inequitable, and too late. The settlement has been substantially consummated, and cannot as a practical matter be undone without negatively affecting thousands of families in St. Bernard Parish.

REASONS WHY THE PETITION SHOULD BE DENIED

The District Court below found that Petitioner was not a member of the class subject to the class action settlement that was before it for approval. Nor was he a proper legal representative of his mother's estate, the other entity he claimed to represent in his objection to the class action settlement. It is undisputed that Mr. Duchmann never intervened in the class action proceedings in the District Court or otherwise sought to obtain a procedural status sufficient to give him standing to object to the settlement.

The issue presented by the petition has previously been decided by this Court. *Marino v. Ortiz*, 484 U.S. 301, 108 S.Ct. 586 (1988). In that case, a group of white police officers made a collateral attack on the settlement of a class action in which the class members were all black or Hispanic police officers who

sued the New York City Police Department under Title VII of the Civil Rights Act of 1964. In that proceeding, three other groups of police officers were permitted to intervene as co-defendants. The petitioners were a group of white police officers who claimed they were treated discriminatorily. Like Mr. Duchmann, they presented their objections to the district court at the fairness hearing, but they chose not to intervene. Pursuant to Federal Rule of Civil Procedure 24 they filed a separate proceeding, and attempted to appeal from the consent decree in the class action. Like Mr. Duchmann, the petitioners in the *Marino* case claimed that the approval of the settlement and the final consent decree in the class action violated their Fourteenth Amendment equal protection rights. The Court of Appeals dismissed their appeal "because Petitioners were not parties to the litigation giving rise to the consent decree." *Id.* In affirming, this Court held that:

> Because Petitioners were not parties to the underlying lawsuit, and because they failed to intervene for purposes of appeal, they may not appeal from the consent decree approving that lawsuit's settlement; therefore we affirm the judgment of the Court of Appeals. The rule that only parties to a lawsuit, are those that properly become parties, may appeal an adverse judgment, is well settled.

Id., *citing United States Ex Rel. Louisiana v. Jack*, 244 U.S. 397, 402, 37 S.Ct. 605, 607, 61 L.Ed. 1222 (1917); FED. R. APP. P. 3(c).

Additionally, respondent suggests that the petition presents an issue that is moot. Petitioner posted no supersedeas bond and sought no stay of the District Court's order approving the settlement. As a result, the process approved by the District Court went forward. Hundreds of millions of dollars have been dispersed to thousands of St. Bernard residents and property owners. Hundreds of homes and properties have been remediated or demolished, and in some instances rebuilt. Thousands of former and present St. Bernard residents have used the money paid by Murphy to get on with their lives. As a practical matter, it would be impossible to undo that settlement without serious harm to all of the individuals and entities that participated in the settlement process that was approved by the District Court.

Although there is no established mootness doctrine dealing with dismissal of appeals from approvals of settlement agreements in class actions, as there is in the bankruptcy context, the rationale is the same. Under bankruptcy law, a bankruptcy appellate court can find that an appeal from the approval of a Chapter 11 plan is "equitably moot" when an appealing creditor or other party in interest fails to obtain a stay of the underlying Chapter 11 plan approval. In determining whether a bankruptcy appeal is equitably moot, a court considers three facts: (1) whether the complaining party has failed to obtain a stay; (2) whether the plan has been substantially consummated; and (3) whether the relief requested would affect the rights of parties not before the court, or the

success of the plan. *In Re Grimland, Inc.*, 243 F.3d 228 (5th Cir. 2001), *rehearing granted*, opinion modified (May 10, 2001). An appeal is "equitably moot" when a plan of reorganization has been so substantially consummated that the court can order no effective relief, even though there may still be live disputes between the parties; the doctrine rests on the need for finality, and upon the need for third parties to rely on that finality, in bankruptcy proceedings; it is not rooted in the requirements of Article III (*i.e.*, that there be a justiciable case or controversy), but is a doctrine that courts have developed in response to particular problems presented by consummation of Chapter 11 plans of reorganization. *Id.*

In this case, it is essential to the class action approval process that the District Court's order approving a complicated and extensive process for distributing hundreds of millions of dollars to St. Bernard Parish residents not be negatively affected by a subsequent appeal for which there is no security. That process has been successfully implemented. In reliance on the Class Action Settlement, Murphy has expended hundreds of millions of dollars, and thousands of class members have received and spent those funds on rebuilding their lives.

CONCLUSION

Respondents Murphy Oil USA, Inc. and the Class Action Plaintiffs request that the Court summarily deny Wayne Duchmann's petition. It is deficient in form, fails to adequately describe the reasons for the dismissal of his appeal below, and it seeks to upset a class action settlement to which he is not a party, and which has been successfully implemented.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PATRICK JOSEPH TURNER, ET AL
Plaintiff/Appellant

v.

Murphy Oil USA, Inc.
Defendant/Appellee

Appeal from the United States District Court
Eastern District of Louisiana
Civil Action No. 05-4206, Consolidated Cases

OPPOSED RULE 27.3 EMERGENCY MOTION OF MURPHY OIL USA, INC. TO DISMISS NOTICES OF APPEAL FILED BY WAYNE J. DUCHMANN AND GREGORY FAIA

(Filed Mar. 9, 2007)

NOW INTO COURT, through undersigned counsel, comes Murphy Oil USA, Inc., (hereinafter, Murphy) which pursuant to Fifth Circuit Rule of Appellate Procedure 27.3 files this Emergency Motion seeking the dismissal of the Notices of Appeal filed by Wayne J. Duchmann (Duchmann) and Gregory Faia (Faia) for the reasons set forth herein below.

In accordance with Fifth Circuit Rule of Appellate Procedure 27.4, counsel for Murphy has contacted Duchmann and Faia, who oppose the instant motion.

INTRODUCTION

This emergency motion arises out of two objections to a judicially approved class action settlement between Murphy and the plaintiff class involving an oil spill that occurred in St. Bernard Parish, Louisiana following Hurricane Katrina. Under the settlement, as approved, some 4000 property owners, business owners, churches and schools collectively stand to receive $120 million in cash compensation. Only 2 individuals, Wayne Duchmann and Gregory Faia[1], objected to the settlement. The district court considered the objections at the Fairness Hearing, overruled the Duchmann objection finding Duchmann to be a non-party to the case and severed the Faia objection as it involved an administrative issue and not an attack on the overall fairness of the settlement.

In a transparent attempt to leverage Murphy into a blackmail settlement of their individual issues, Duchmann and Faia filed notices of appeal with full

[1] The Notice of Appeal was filed by Gregory Faia on behalf of GGF Holding Company, L.L.C. Gregory Faia and GGF Holding are one and the same. In its Order & Reasons, the District Court referred to "Mr. Faia's objection." The same reference is made herein.

knowledge and intent to delay the distribution of the $120 million to the settlement class. Under the Settlement Agreement, the class does not receive compensation until the Judgment approving the settlement becomes "final," i.e., the expiration of the period to take appeals or the resolution of all appeals occurs. Thus, the effect of the notices of appeal filed by Duchmann and Faia is to delay distribution of $120 million to families, schools, businesses and churches in desperate need of relief due to Hurricane Katrina and all of its after effects. As the district. court stated in its Order and Reasons approving the settlement:

> *"From the inception of litigation, the Court has recognized that speedy resolution of this case was imperative because of the critical situation that many of the Plaintiff class members have faced since Hurricane Katrina. The storm completely devastated St. Bernard Parish, which has always been a tight-knit community. Many residents continue to remain displaced and are unable to return to their homes. Compensation now rather than later is an important step in affording class members the means to rebuild their neighborhood. Moreover, remediation efforts are critical in creating a safe environment for residents. Recognizing the desire of the St. Bernard community to return to their homes and businesses, the Court believes that the impact of settlement will significantly aid*

their road to recovery and return to normality."[2]

Given the unique circumstances presented, Murphy is seeking emergency action by this Court in dismissing procedurally defective notices of appeal. The Duchmann notice filed *pro se* is defective for several reasons. First, Duchmann is a non-party to the action in the district court. As found by the district court, Duchmann is not a named plaintiff or even a member of the settlement class. Nor has Duchmann intervened in the district court. Second, Duchmann has already failed to take necessary steps required by the Federal Rules of Appellate Procedure and the Rules of the Fifth Circuit to properly prosecute his appeal.

The Faia notice is simply premature. Judge Fallon severed the objection filed by Faia because it concerns the claims administration process and not the overall settlement program. Judge Fallon has jurisdiction over claims administration issues and has ordered briefing by Murphy and Faia on the administrative issue presented by the objection,

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[2] See Record Excerpt No. 4, Order & Reasons Approving Class Action Settlement and Award of Common-Benefit Fees and Expenses, pps. 22-23, January 30, 2007. Pursuant to FRAP 11(g), if, before the record is forwarded, a party makes a motion for dismissal, a party can designate parts of the record to be transmitted by the district clerk. Murphy has requested the district clerk to designate the parts of the record attached hereto as Record Excerpts Nos. 1-7, such record excerpts are forthcoming.

which has been completed. The Faia objection matter is currently under submission with the district court.

LAW AND ARGUMENT

I. MR. DUCHMANN IS A NON PARTY AND CANNOT APPEAL.

Only parties to a lawsuit, or those that properly become parties, may appeal a judgment. As such, a notice of appeal should be dismissed where the appellant was not a party to the lawsuit in the district court, as a nonparty has no right of appeal. *Cutting v. Bullerdick*, 188 F.2d 837 (9th Cir. 1951).

It is undisputed that Mr. Duchmann is not a named plaintiff. The record is also clear that Mr. Duchmann is not a member of the class. The Court certified a class composed of residents and property owners within a defined geographic area, i.e. the "class area." [See Record Excerpt No. 4, p. 5.] Mr. Duchmann does not own any property or business in the class area and did not reside in the class area, thus he is not a member of the class.

Mr. Duchmann purports to represent the interest of his mother who did own property in class area and who is recently deceased. Mr. Duchmann does not have a power of attorney with respect to his mother's affairs and has presented no evidence that he is the appropriate succession representative of his mother's estate. In fact, upon questing by the district court at the Fairness Hearing, Mr. Duchmann stated that his

brother is his mother's successor. [See Record Excerpt No. 4, p. 39.] According to article 935 of the Louisiana Civil Code, "[p]rior to the qualification of a succession representative only a universal successor may represent the decedent with respect to the heritable rights and obligations of the decedent." Additionally, "[e]xcept as otherwise provided by law, the succession representative appointed by a court of this state is the proper plaintiff to sue to enforce a right of the deceased or of his succession. . . . " La. Code Civ. Proc. Ann. Art. 685. "Article 685 has been declared to be the controlling provision of law as to whether a succession representative or an heir/legatee is able to enforce rights of the succession." *Boyer v. Stric-Lan Co. Corp.*, 04-872, (La. App. 3 Cir. 11/10/04); 888 So.2d 1037, 1042 (citing *Baten v. Taylor*, 386 So.2d 333 (La. 1979) and *Horrell v. Horrell*, 99-1093 (La. App. 1 Cir. 10/6/00); 808 So.2d 363)). The law of Louisiana is clear and unambiguous that a successor is the proper legal representative of a deceased party and only the successor may enforce the deceased's rights. Accordingly, the district court was correct in holding that Mr. Duchmann does not legally represent a class member [See Record Excerpt No. 4, p. 39.] A litigant must assert his or her own legal rights and interests, and cannot rest on a claim to relief on the legal rights or interests of third parties. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 474 (1982). Therefore, Mr. Duchmann has no right of appeal as a representative of his mother's estate.

In an appeal from an objector to a class settlement the recent U.S. Supreme Court, *Devlin v. Scardelletti,* is usually discussed. 536 U.S. 1 (2002). *Devlin* has no application in this proceeding, however. *Devlin* deals with whether an unnamed class member, who objected to a class action settlement at the fairness hearing, may appeal an order of approval of a settlement for a class certified under Federal Rule of Civil Procedure ("FRCP") Rule 23(b)(1). This case does not apply as Mr. Duchmann is not an unnamed class member for the reasons set forth above. He is a non-party.

Additionally, this class has been certified under FRCP Rule 23(b)(3) which allows class members to opt out unlike the situation in *Devlin.* In fact, Mr. Duchmann's mother's property, if properly represented, was given two chances to opt out of this litigation, one pre-settlement and one post-settlement. No one representing Mr. Duchmann's mother's property chose to opt out.

II. MR. DUCHMANN'S APPEAL SHOULD BE DISMISSED FOR FAILURE TO PROSECUTE.

FRAP 7 provides that "[i]n a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal." The district court on March 2, 2007, ordered such a bond be posted by Mr. Duchmann in the amount of $20,000.00. Mr. Duchmann has not posted this bond.

Additionally, FRAP 10(b) and Fifth Circuit Rule 10 requires that within ten days after filing the notice of appeal, the appellant must order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary or file a certificate stating that no transcript will be ordered. Mr. Duchmann's Notice of Appeal is dated February 21, 2007. More than ten days have passed and Mr. Duchmann has not requested a transcript or filed a certificate stating that no transcript will be ordered. When the appellant fails to comply with the rules of the court, the appeal must be dismissed for want of prosecution. Fifth Circuit Rule 42.3.2.

Mr. Duchmann's appeal is not one of proper motive, as demonstrated by Mr. Duchmann's failure to prosecute his appeal. Reality is that Mr. Duchmann has filed a frivolous notice of appeal to hold hostage the $120 million in compensation due class members to extort a disproportionately high settlement for himself compared to what class members will receive under the settlement allocation plan. There are more than 11,000 class members in this action and their payments are being unduly delayed by Mr. Duchmann's frivolous and procedurally defective notice of appeal.

III. The Notice of Appeal filed by Gregory Faia is Premature and should be dismissed

On January 30, 2007, this Court issued its *Order and Reasons Approving Class Action Settlement and*

Award of Common – Benefit Fees and Expenses. In its Order and Reasons the court addressed the objection raised by Faia. Faia claimed that he, not Georgia Valenza (Valenza), owned the property located at 2428 Volpe Drive, which was individually settled out of court before the settlement of the class action. In connection with the out of court settlement, Valenza presented documents evidencing her ownership of the property. Valenza settled her claim as the property owner and received the settlement proceeds. Faia subsequently filed an objection to the disbursement of the proceeds to Valenza, claiming that he was the true property owner and therefore, was due an award under the settlement program.

In its Order & Reasons dated January 30, 2007, the Court stated:

> *"Mr. Faia's objection does not concern the fairness, adequacy, or reasonableness of the settlement, but rather concerns the claims administration process and whether he should receive a settlement award. The Court retains jurisdiction over the administration of all claims, and accordingly, it will take this matter independently and under submission as it is not related to the Court's determination regarding approval of the settlement program."* (See Record Excerpt No. 4, p. 37.)

On January 30, 2007, the Court issued *a Final Judgment Pursuant to Rule 54(b) Approving Class Action Settlement and Award of Common-Benefits*

Fees and Expenses. [See Record Excerpt No. 3.] Because Faia's objection was severed, his objection was not included in the Court's Final Judgment and it remains under submission as of date.

Pursuant to Federal Rule of Appellate Procedure 4, a notice of appeal must be filed within 30 days after the judgment or order appealed from is entered. FRAP 4(a)(1)(A). A notice of appeal filed after the court announces a decision or order, but before the entry of judgment or order is treated as filed on the date and after the entry. FRAP 4(a)(2). If a party files a notice of appeal after the court announces or enter [sic] judgment but before it disposes of a motion for judgment under rule 50(b), a motion to amend under 52(b), a motion for attorney's fees under Rule 54, a motion for new trial under Rule 59 or a motion for relief under Rule 69, the notice becomes effective to appeal when the order disposing of the last remaining motion is entered. Fed.R.App.P. 4(a)(4)(B)(i).

Rule 4(a)(2) permits a premature notice of appeal from a non-final decision to operate as a notice of appeal from the final judgment *only* when a district court announces a decision that would be appealable if immediately followed by the entry of judgment. *FirsTier Mortg. Co. v. Investors Mortg. Ins. Co.*, 498 U.S. 269, 276-77, 111 S.Ct. 648, 112 L.Ed.2d 743 (1991); *Kinnie v. Louisiana Department of Insurance*, 153 Fed.Appx. 254 (5th Cir. 2005). In this case, Faia's notice of appeal does not comply with FRAP 4. His notice of appeal is premature and is not made in response to any order or decision that would be

immediately appealable, nor is made after entry of judgment but before the disposition of any motion provided for in FRAP 4(a)(4)(B)(i).

The Court's Order and Reasons dated January 30, 2007, and its accompanying Final Judgment from the same date, concerned the approval of the class action settlement. Nowhere in the Court's Final Judgment is there any reference to Faia's objection. [See Record Excerpt No. 3.] In fact, in its Order and Reasons, the Court specifically found that Faia's objection *did not* relate to the approval of the class action settlement, but was related instead to the claims administration process and Faia's claim for a settlement award. [See Record Excerpt No. 4, p. 37.] Because Faia's objection was unrelated to issue before the Court, the Court retained jurisdiction over his objection and independently took the matter under submission. As of date, Faia's objection remains under submission and no decision, determination and/or judgment has been rendered.

Accordingly, because the district court has not issued a decision or order on Faia's objection, there is no order or judgment from which an appeal lies. Faia's Notice of Appeal should be dismissed as premature.

CONCLUSION

For the reasons set forth hereinabove, Murphy respectfully requests emergency action by this Court to dismiss the Notices of Appeal filed by Duchmann and Faia.

Respectfully Submitted,

/s/ Kerry J. Miller
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served upon the following counsel of record via hand delivery and certified mail on this 6 day of March, 2007:

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/s/ Kerry J. Miller

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons and entities, as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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A. J. Krouse, III
Kerry J. Miller
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CERTIFICATE OF COMPLIANCE

Pursuant to Fed.R.App.P. 27 and Fifth Circuit Rule 27.4:

1. This motion complies with the type-volume limitation of Fed.R.App.P. 279d)(2) because it does not exceed 20 pages.

2. This reply brief complies with the type-face requirements of Fed.R.App. P. 32(a)(5) and the type-style requirements of Fed.R.App. 32(a)(6) because this motion has been prepared in proportionally spaced typeface using Microsoft Word processing system in 14-point font size Times New Roman type style.

Dated: 3-6-07 /s/ Kerry J. Miller
Counsel for Murphy Oil USA, Inc.